Senate Engrossed House Bill

**FILED**
**KEN BENNETT**
**SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 214

# HOUSE BILL 2419

AN ACT

AMENDING SECTIONS 8-513, 8-824, 8-842, 8-845 AND 8-862, ARIZONA REVISED STATUTES; RELATING TO DEPENDENT CHILDREN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 8-513, Arizona Revised Statutes, is amended to read:

8-513. Participation in activities; contact with relatives; placement with siblings

A. A child may participate in activities and functions generally accepted as usual and normal for children of the child's age group if permission is granted as follows:

1. ~~When~~ IF the activity by law requires a license, the agency or division that placed the child may give permission on request of the foster parent.

2. ~~When~~ IF the activity includes the child leaving the jurisdiction of the court for a period not to exceed thirty days, the agency or division that placed the child may give permission on request of the foster parent.

3. ~~When~~ IF the activity is one which is associated with a school or organization not prohibited by rule of the division, the foster parents of the child may give permission.

B. The state shall indemnify and hold harmless the agency or foster parents for liability that may be incurred or alleged as a result of giving permission pursuant to subsection A if it is reasonably and prudently given. The state shall provide the defense of any action alleging such liability.

C. A child placed in foster care has the right to maintain contact with friends~~, siblings~~ and other relatives unless the court has determined that contact is not in the child's best interests as determined pursuant to a court hearing.

D. IF A CHILD HAS BEEN REMOVED FROM THE CHILD'S HOME AND PLACED IN OUT-OF-HOME PLACEMENT, GUARDIANSHIP OR ADOPTIVE PLACEMENT, THE DEPARTMENT SHALL MAKE REASONABLE EFFORTS TO PLACE THAT CHILD WITH THE CHILD'S SIBLINGS OR, IF THAT IS NOT POSSIBLE, TO MAINTAIN FREQUENT VISITATION OR OTHER ONGOING CONTACT BETWEEN THE CHILD AND THE CHILD'S SIBLINGS UNLESS A COURT DETERMINES THAT EITHER THE PLACEMENT OR THE VISITATION OR CONTACT WOULD BE CONTRARY TO THE CHILD'S OR A SIBLING'S SAFETY OR WELL-BEING.

Sec. 2. Section 8-824, Arizona Revised Statutes, is amended to read:

8-824. Preliminary protective hearing; probable cause; appointment of counsel

A. The court shall hold a preliminary protective hearing to review the taking into temporary custody of a child pursuant to section 8-821 not fewer than five days nor more than seven days after the child is taken into custody, excluding Saturdays, Sundays and holidays. If clearly necessary to prevent abuse or neglect, to preserve the rights of a party or for other good cause shown, the court may grant one continuance that does not exceed five days.

B. The following persons shall be present at the preliminary protective hearing:

1. The child's parents or guardian, unless they cannot be located or they fail to appear in response to the notice.
2. Counsel for the parents if one has been requested or retained.
3. The child's guardian ad litem or attorney.
4. The protective services worker.
5. Counsel for the protective services worker.

C. If the court finds that it is in the best interests of the child, the court may allow the following to be present at the preliminary protective hearing:

1. The child.
2. Any relative or other interested person with whom the child is or might be placed as described in section 8-845, subsection A.
3. Witnesses called by the parties.
4. An advocate or interested person as requested by the parent or guardian.
5. Other persons who have knowledge of or an interest in the welfare of the child.

D. At the hearing, the court shall advise the parent or guardian of the following rights:

1. The right to counsel, including appointed counsel if the parent or guardian is indigent.
2. The right to cross-examine all witnesses who are called to testify against the parent or guardian.
3. The right to trial by court on the allegations in the petition.
4. The right to use the process of the court to compel the attendance of witnesses.

E. At the hearing, the court:

1. Shall receive a report of any agreement reached pursuant to section 8-823, subsection D. The report may be made orally.
2. Shall provide an opportunity for the child's parent or guardian, if present, and any other person who has relevant knowledge, to provide relevant testimony.
3. May limit testimony and evidence that is beyond the scope of the removal of the child, the child's need for continued protection, placement, visitation and services to be provided to the child and family.
4. May take into consideration as a mitigating factor the participation of the parent or guardian in the healthy families program established by section 8-701.
5. Shall take into consideration as a mitigating factor the availability of reasonable services to the parent or guardian to prevent or eliminate the need for removal of the child and the effort of the parent or guardian to obtain and participate in these services.
6. Shall inform the child's parent or guardian that the hearing may result in further proceedings to terminate parental rights.

7. Shall order the parent or guardian to provide the court WITH the names, THE type of relationship and all available information necessary to locate persons WHO ARE related to the child or who have a significant relationship with the child. If there is not sufficient information available to locate a relative or person with a significant relationship with the child, the parent or guardian shall inform the court of this fact. The court shall further order the parent or guardian to inform the department immediately if the parent or guardian becomes aware of information related to the existence or location of a relative or person with a significant relationship to the child.

8. Shall inform the parent that substantially neglecting or wilfully refusing to remedy the circumstances that cause the child to be in an out-of-home placement, including refusing to participate in reunification services, is grounds for termination of parental rights to a child.

9. Shall give paramount consideration to the health and safety of the child.

10. Shall determine whether the department is attempting to identify and assess placement of the child with a grandparent or another member of the child's extended family including a person who has a significant relationship with the child.

11. Shall inform a foster parent, A preadoptive parent or a member of the child's extended family with whom the department has placed the child of the right to be heard in any proceeding to be held with respect to the child.

F. The petitioner has the burden of presenting evidence as to whether there is probable cause to believe that continued temporary custody is clearly necessary to prevent abuse or neglect pending the hearing on the dependency petition.

G. THE DEPARTMENT MUST MAKE REASONABLE EFFORTS TO PLACE A CHILD WITH SIBLINGS AND, IF THAT IS NOT POSSIBLE, TO MAINTAIN FREQUENT VISITATION OR OTHER ONGOING CONTACT BETWEEN ALL SIBLINGS.

~~G.~~ H. If the child is in the temporary custody of the department, the department shall submit not later than the day before the hearing a written report to the court and the parties that states:

1. The reasons the child was removed from the parent's or guardian's custody.

2. Any services that have been provided to the child or the child's parent or guardian to prevent removal.

3. The need, if any, for continued temporary custody.

4. The types of service needed to facilitate the return of the child to the custody of the child's parents or guardian.

5. If the child is not placed with a grandparent, whether the child has any relatives or other interested parties as described in section 8-845, subsection A who may be able and willing to take temporary custody.

6. Any services that are requested by the parent or guardian but that are not provided and the reasons the services were not provided.

7. ~~Any~~ WHAT efforts THE DEPARTMENT HAS made to place siblings together, and if they are not placed together, the SPECIFIC reasons why THIS DID NOT OCCUR.

8. ~~Any~~ IF THE PLACEMENT OF SIBLINGS TOGETHER WAS NOT POSSIBLE FOR ALL OR ANY OF THE SIBLINGS, efforts THE DEPARTMENT HAS made to facilitate communications among siblings AND A PROPOSAL FOR FREQUENT VISITATION OR CONTACT PURSUANT TO SUBSECTION G OF THIS SECTION. IF FREQUENT VISITATION OR CONTACT WITH SIBLINGS IS NOT RECOMMENDED, THE DEPARTMENT SHALL STATE THE REASONS WHY THIS WOULD BE CONTRARY TO THE CHILD'S OR A SIBLING'S SAFETY OR WELL-BEING.

9. A proposal for visitation WITH THE CHILD'S PARENTS OR GUARDIAN and the results of any visitation that has occurred since the child was removed.

10. A proposed case plan for services to the family.

~~H.~~ I. The parent or guardian shall state whether the parent or guardian admits or denies the allegations in the petition filed pursuant to section 8-841. If the parent or guardian admits or does not contest the allegations in the petition, the court shall determine that the parent or guardian understands the rights described in subsection D of this section and that the parent or guardian knowingly, intelligently and voluntarily waives these rights.

~~I.~~ J. At the hearing, if the child is not returned to the parent or guardian, the court shall:

1. Enter orders regarding the placement of the child pending the determination of the dependency petition and visitation, if any.

2. If a relative is identified as a possible placement for the child, notify the relative of the right to be heard in any proceeding to be held with respect to the child.

3. Determine if the tasks and services set forth in the case plan are reasonable and necessary to carry out the case plan.

Sec. 3. Section 8-842, Arizona Revised Statutes, is amended to read:

8-842. <u>Initial dependency and dependency adjudication hearings; deadlines</u>

A. Except as provided in section 8-826, the court shall set the initial dependency hearing within twenty-one days after the petition is filed. If service by publication is required, the court may set an initial dependency hearing within a time period to allow for publication pursuant to the rules of procedure for the juvenile court.

B. At the initial dependency hearing, the court shall:

1. Order the parent or guardian to provide the court WITH the names, THE type of relationship and all available information necessary to locate persons WHO ARE related to the child or who have a significant relationship with the child. If there is not sufficient information available to locate a relative or person with a significant relationship with the child, the parent or guardian shall inform the court of this fact. The court shall order the parent or guardian to inform the department immediately if the parent or

guardian becomes aware of information related to the existence or location of a relative or person with a significant relationship with the child.

2. Determine that the department is attempting to identify and assess placement of the child with a grandparent or another member of the child's extended family including a person who has a significant relationship with the child.

3. IF THE CHILD HAS SIBLINGS, DETERMINE THAT THE DEPARTMENT IS ATTEMPTING TO IDENTIFY AND ASSESS PLACEMENT OF THE CHILD WITH THE CHILD'S SIBLINGS IF THIS IS POSSIBLE AND IS IN THE CHILD'S BEST INTERESTS.

C. The court may continue the initial dependency hearing for good cause, but, unless the court has ordered in-home intervention, the dependency adjudication hearing shall be completed within ninety days after service of the dependency petition. The time limit for completing the dependency adjudication hearing may be extended for up to thirty days if the court finds good cause or in extraordinary cases as prescribed by the supreme court by rule.

Sec. 4. Section 8-845, Arizona Revised Statutes, is amended to read:

8-845. Disposition hearing

A. After receiving and considering the evidence on the proper disposition of the case, the court may enter orders awarding a dependent child as follows:

1. To the care of the child's parents, subject to the supervision of the department of economic security.

2. To a grandparent or another member of the child's extended family including a person who has a significant relationship with the child, unless the court has determined that such placement is not in the child's best interests.

3. To a suitable institution.

4. To an association willing to receive the child.

5. To a reputable citizen of good moral character.

6. To an appropriate public or private agency licensed to care for children.

7. To a suitable school.

8. To supervision under the independent living program established pursuant to section 8-521.

9. To any adult as a permanent guardian pursuant to article 5 of this chapter.

B. In reviewing the status of the child and in determining its order of disposition, the court shall consider the health and safety of the child as a paramount concern and the following criteria:

1. The goals of the placement and the appropriateness of the case plan.

2. The services that have been offered to reunite the family.

3. If returning the child home is not likely, the efforts that have been or should be made to evaluate or plan for other permanent placement plans.

4. THE EFFORTS THAT HAVE BEEN MADE OR SHOULD BE MADE TO PLACE THE CHILD WITH THE CHILD'S SIBLINGS OR TO PROVIDE FREQUENT VISITATION OR CONTACT WHEN PLACEMENT WITH SIBLINGS HAS NOT BEEN POSSIBLE.

C. The court shall review the permanent plan that has been established for the child. In reviewing the status of the child, the court, insofar as possible, shall seek to reunite the family. If the court does not order reunification of the family, the court shall order a plan of adoption or another permanent plan that is in the child's best interest AND THAT TAKES INTO CONSIDERATION THE PLACEMENT OF THE CHILD WITH SIBLINGS OR THAT PROVIDES FOR FREQUENT VISITATION OR CONTACT AMONGST SIBLINGS UNLESS THE COURT DETERMINES THAT EITHER THE PLACEMENT WITH THE SIBLINGS OR THE VISITATION OR CONTACT WOULD BE CONTRARY TO THE CHILD'S OR A SIBLING'S SAFETY OR WELL-BEING.

D. Notwithstanding subsection C of this section, reasonable efforts to place a child for adoption may be made concurrently with reasonable efforts to reunify the family.

Sec. 5. Section 8-862, Arizona Revised Statutes, is amended to read:

8-862. Permanency hearing

A. The court shall hold a permanency hearing to determine the future permanent legal status of the child:

1. Within thirty days after the disposition hearing if the court does not order reunification services.

2. Within six months after a child who is under three years of age is removed from the child's home. The court shall not continue that permanency hearing beyond six months after the child who is under three years of age is removed from the child's home unless the party who is seeking the continuance shows that the determination prescribed in section 8-829, subsection A, paragraph 6 has been made or will be made within the time prescribed in that paragraph.

3. In all other cases, within twelve months after the child is removed from the child's home. The court shall not continue the permanency hearing beyond twelve months after the child is removed from the child's home unless the party who is seeking the continuance shows that the determination prescribed in section 8-829, subsection A, paragraph 5 has been made or will be made within the time prescribed in that paragraph.

B. At the permanency hearing, the court shall determine:

1. Whether termination of parental rights, adoption, permanent guardianship pursuant to section 8-872 or some other permanent legal status is the most appropriate plan for the child and shall order the plan to be accomplished within a specified period of time.

2. Whether reasonable efforts have been made to finalize the permanency plan in effect.

3. WHAT EFFORTS HAVE BEEN MADE IN THE PERMANENCY PLAN TO PLACE THE CHILD WITH THE CHILD'S SIBLINGS OR TO PROVIDE FREQUENT VISITATION OR CONTACT, UNLESS THE COURT HAD ALREADY DETERMINED THAT PLACEMENT WITH ALL OR ANY SIBLINGS OR VISITATION OR CONTACT IS NOT POSSIBLE OR WOULD BE CONTRARY TO THE CHILD'S OR A SIBLING'S SAFETY OR WELL-BEING.

C. If the court determines that the child should remain in out-of-home placement longer than eighteen months from the date of the permanency order, the court shall conduct a review of the order at least once each year. After reviewing the order, the court may reaffirm the order or direct other disposition of the child.

D. If the court determines that the termination of parental rights is clearly in the best interests of the child, the court shall:

1. Order the department or the child's attorney or guardian ad litem to file within ten days after the permanency hearing a motion alleging one or more of the grounds prescribed in section 8-533 for termination of parental rights. The party who files the motion has the burden of presenting evidence at the termination hearing to prove the allegations in the motion.

2. Set a date for an initial hearing on the motion for termination of parental rights within thirty days after the permanency hearing. If the termination is contested at the initial hearing, the court shall set a date for the trial on termination of parental rights within ninety days after the permanency hearing.

E. The department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

F. If the court determines that permanent guardianship is clearly in the best interests of the child, the court shall:

1. Order the department or the child's attorney or guardian ad litem to file within ten days after the permanency hearing a motion alleging the grounds prescribed in section 8-871 for permanent guardianship. The party who files the motion has the burden of presenting evidence at the hearing to prove the allegations in the motion.

2. Set a date for an initial hearing on the motion for permanent guardianship within thirty days after the permanency hearing. If the permanent guardianship is contested at the initial hearing, the court shall set a date for the trial on the permanent guardianship within ninety days after the permanency hearing.

G. Evidence considered by the court in making a decision pursuant to this section also shall include any substantiated allegations of abuse or neglect committed in another jurisdiction.

H. If the court determines that termination of parental rights or permanent guardianship is clearly in the best interest of the child and the child has been placed in a prospective permanent placement, removal of the child from that placement may occur only by court order except for removal

pursuant to ~~sections~~ SECTION 8-802 or 8-821. For THE purposes of this subsection, a prospective permanent placement includes:

1. A grandparent or another member of the child's extended family including a person who has a significant relationship with the child.

2. A person or persons with an expressed interest in being the permanent placement for the child in a certified adoptive home where the child resides, a home that is a permanent placement for a sibling of the child or a licensed family foster home where the child resides.

I. This section does not prevent the department from presenting for the court's consideration a grandparent or another member of the child's extended family including a person who has a significant relationship with the child and who has not been identified as a prospective permanent placement for the child before the child's placement with a prospective permanent placement.

APPROVED BY THE GOVERNOR MAY 3, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 3, 2010.

Passed the House March 22, 2010

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate April 20, 2010

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA**
**OFFICE OF GOVERNOR**

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary to the Governor

Approved this _____day of

_____

at _____o'clock _____M.

_____
Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA**
**OFFICE OF SECRETARY OF STATE**

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary of State

H.B. 2419

**HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE**

April 27, 2010,

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Speaker of the House

Pro Tempore

Cheryl Laube

Chief Clerk of the House

**EXECUTIVE DEPARTMENT OF ARIZONA**
**OFFICE OF GOVERNOR**

This Bill was received by the Governor this

27 day of April, 2010,

at 4:15 o'clock P. M.

Nicole Bendle

Secretary to the Governor

Approved this 3rd day of

May, 2010,

at 2:16 o'clock P. M.

Jan Brewer

Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA**
**OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this 3rd day of May, 2010,

at 4:34 o'clock P M.

Ken Bennett

Secretary of State

**H.B. 2419**